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Introduction

Unless a property is exempt, any construction of a new onsite wastewater treatment system (OWTS) or major modification or repair of an existing onsite system without a permit is an illegal installation. An investigation into an illegal installation may begin for several reasons – not necessarily limited to the following. An EPHS can receive information or a complaint about an illegal onsite system installation from another contractor, a neighbor, a property owner, or other concerned person. It is not necessary to receive a complaint, however, the EPHS must determine probable cause to investigate an illegal installation. If evidence of recent construction is observed in an area that is not served by a community sewer, and the EPHS is not aware of a permit being issued for the site, it is appropriate to check with the contractor or homeowner regarding whether the property is exempt or whether a permit is required. Acreage exemptions can be confirmed by a check of the recorded deed(s).

Other improper actions associated with system installations may occur. When a permit has been issued, the property owner and installer are both responsible for compliance with the construction standards by installing the system in accordance with the approved permit and application. The installer must notify the administrative authority before construction on a system is completed and then maintain the system in a condition, which allows for inspection as detailed in 701.050. If the property owner is installing the system, they must make proper notification. In addition to non-compliance with the standards and failure to notify, misrepresentation as a Registered Installer and failure to file a performance bond or letter of credit when required are violations of Chapter 701 RSMo.

Duties of Onsite Sewage Program Staff and Office Support

1. Establish and review guidelines to handle unpermitted installations and improper actions
2. Provide for training regarding unpermitted installations and improper actions
3. Fulfill common responsibilities of LPHA in counties where OWTS are permitted by DHSS

Duties of other DHSS Staff

1. Assist with training
2. Provide technical assistance to counties
3. Fulfill common responsibilities of LPHA in counties where OWTS are permitted by DHSS

Common Responsibilities of Local Public Health Agency

1. Assure compliance with construction standards, approved application and permit
2. Conduct investigations relating to unpermitted installations
3. Issue notices of violation when warranted
4. Staff should be available for hearings when necessary
5. Work with system owner and installer to achieve compliance
6. Refer cases of 701 violations to the County Prosecuting Attorney, when necessary

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Illegal Installations

Following is a general guideline for state and contract agencies to follow when investigating a possible illegal new installation or major modification or repair of an existing system.

1. When someone contacts you regarding a possible illegal installation/repair, record his or her name, address and phone number, if provided. Obtain information as to the actual or approximate date of the installation/repair, the owner of the property involved, the name of the contractor involved, approximate location of the onsite system, and whether they witnessed the installation/repair or saw evidence that work on a system had been done. Document any information on complaint form E15.12. If you become aware of a possible illegal installation without a complaint, record all available information.
2. Determine whether the property is exempt from the provisions of the onsite sewage law and rules. Continue to determine probable cause, if the property is not exempt.
3. View the property from a public access area (such as, the roadway), areas that could be reasonably assumed to be accessible to the public (such as, a driveway and walkway to the front door), or from adjacent property where you have permission to enter. The law provides right of entry onto the property for the investigation of a sewage complaint, but does not clearly provide right of entry for investigation of a possible illegal installation or repair when probable cause was determined without a complaint.
4. If there are appearances of a recent installation/repair, or if you are unable to view the probable area of construction on the property, contact the installer that has been implicated and inquire of their involvement. Also, determine if the installer is registered with the state. Document your findings of the visit to the property and the responses of the installer.
5. If you are unable to establish that an illegal installation occurred, close the investigation. It may be reopened if more evidence becomes available.
6. If the investigation confirms that an illegal installation/repair has occurred, issue a violation notice, form [E3.10](#), to the homeowner. As in EHOG section 5.6, include a statement of the reasons for issuance of notice and allow reasonable time for compliance. The notice must be served to the property owner by certified mail or in person and it must contain an outline of action necessary to effect compliance. Generally, the property owner would be required to obtain an application, submit the permit application fee, submit the completed application with a site evaluation, and cooperate with the administrative authority to obtain a permit and bring the system into compliance with the standards. Portions of the illegally installed system may need to be uncovered to confirm that it has been installed in accordance with the application, permit and standards. If the system cannot be brought into compliance, a replacement system may need to be designed and installed.

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7. Send a copy of the violation letter to the county prosecuting attorney. If the homeowner will not comply, work with the county prosecutor to have a warning letter sent and/or file charges seeking compliance with department requirements. You may modify the complaint affidavit, included with forms in EHOg subsection 5.12 ([5.12.10](#)), to correspond to the facts in the case.
8. If the investigation resulted in a violation notice to the property owner, and an installer was also implicated, issue a violation letter to that installer. Follow the general format of the installer violation form letter found in EHOg subsection 5.12 ([5.12.8](#)).
9. Send a copy of the violation letter to the County Prosecuting Attorney. Work with the prosecutor to file charges against the installer. If found guilty, the installer would be required to post a performance bond or letter of credit as detailed in 701.052 RSMo.
10. Send a copy of violation letters to the Onsite Sewage Program office. If the illegal installation involved a registered installer, consideration will be given to suspending or revoking their registration. Also, see the section of these guidelines regarding registration suspension or revocation. Provide the Onsite Sewage Program with any information relating to court actions taken by the prosecutor and any findings of guilt.

Improper Actions

As discussed in EHOg subsection 5.2, installation of a permitted system must be according to standards and the approved application and plans. The installer or designer must submit any proposed changes in the approved plans for review by the administrative authority, and the engineer must first approve any proposed changes to his/her plans and specifications. During any site visit and inspection, including the final inspection, it may be determined that the OWTS is not being installed as approved. In that case, post a Notice (OWTS Construction Stop Order), form E3.04, prominently on the site and deliver a copy in person or by certified mail to the installer.

Indicate the problems with the installation on the form, and make clear what is necessary to bring the system into compliance. Any proposed design changes must be submitted for approval by the administrative authority and engineer, if applicable. If the installed portion of the system cannot be brought into compliance with the standards, the property owner, the installer, or the owner's agent must submit a replacement system design. Once the design changes are approved, the Notice should be removed and construction may continue.

Provided the installer cooperates and brings the system into compliance, it may not be necessary to issue a letter of violation. However, if the installer is uncooperative or if in the judgment of the EPHS, the improper actions are significant enough or persistent, a letter of violation should be issued to the installer. In other cases of improper actions – failure to notify, misrepresentation as a Registered Installer and failure to file a performance bond or letter of credit when required – a violation letter should be issued to the installer. Follow the general format of the installer violation form letter found in EHOg subsection [5.12.9](#). List the specific sections of 701 RSMo that have been violated. Refer the case to the prosecutor and work with her/him to file charges

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against the installer. If found guilty, the installer would be required to post a performance bond or letter of credit as detailed in 701.052 RSMo.

Construction permits are issued to property owners. Whether or not an installer cooperates, it is ultimately the owner's responsibility to have a system installed in compliance with the standards before it is placed in operation. If necessary to obtain compliance a violation notice, [E3.10](#), should be issued to the property owner, and if required, referred to the county prosecutor.

Send a copy of violation letters to the Onsite Sewage Program. Probation, suspension or revocation of a registered installer's registration will be considered.

AUTHORITY

701.025 to 701.059 RSMo
19 CSR 20-3.060 and 3.080